

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

AARON SCOTT,

Petitioner,

-vs-

TERRY TIBBELS, Warden,

Respondent.

:

Case No. 3:12-cv-146

:

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

:

ORDER FOR ANSWER

This is an action pursuant to 28 U.S.C. §2254 for a writ of habeas corpus; Petitioner seeks release from confinement imposed as part of the judgment of a State court in a criminal action. The case has been referred to a United States Magistrate Judge pursuant to the Dayton General Order of Assignment and Reference (General Order DAY 12-03, available at www.ohsd.uscourts.gov under the General Orders tab).

Upon preliminary consideration pursuant to Rule 4 of the Rules Governing §2254 Cases, the Court finds that it does not plainly appear from the face of the Petition and any exhibits attached thereto that the Petitioner is not entitled to relief in this Court. Accordingly, it is hereby ORDERED that Respondent shall, not later than July 1, 2012, file an answer conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases. Specifically, said answer shall respond to each allegation made in the Petition, raise any affirmative defense relied on by Respondent, and state whether, from Respondent's perspective, Petitioner has exhausted his state remedies, including delayed appeal and post-conviction petition pursuant to Ohio Revised Code

§2953.21.

Respondent is reminded of the requirement in S. D. Ohio Civ. R. 7.2 (as amended March 1, 1999) that any motion paper over twenty pages must be accompanied by “a succinct, clear and accurate summary, not to exceed five pages, indicating the main sections of the memorandum, the principal arguments and citations to primary authority made in each section, as well as the pages on which each section and any sub-sections may be found.” The answer shall be accompanied by those portions of the state court record needed to adjudicate this case, appropriately indexed and tabbed.

In lieu of these attachments, Respondent may request and the Court will issue a writ of certiorari to the relevant county's Clerk of Courts to produce the complete record.

Nothing in this Order is intended to prevent Respondent from filing a motion to dismiss or other pleading before filing the complete record if disposition can be made on an incomplete record.

Petitioner may, not later than twenty-one days after the Answer is filed, file and serve a reply or traverse to the Answer. If Respondent files a motion to dismiss, Petitioner's time to file a memorandum in opposition will likewise be twenty-one days from service, as provided in S. D. Ohio Civ. R. 7.2(a).

The Clerk is ordered to serve the Petition on Respondent and the Attorney General.

May 21, 2012.

s/ Michael R. Merz
United States Magistrate Judge